



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date:	01/04/12	Bill No:	Assembly Bill 1351
Tax Program:	Underground Storage Tank Maintenance Fee	Author:	Logue
Sponsor:	BOE	Code Sections:	RTC 50117.5
Related Bills:		Effective Date:	01/01/13

BILL SUMMARY

This Board of Equalization (BOE) sponsored bill would allow the BOE to reduce the period of liability to three years for a deficiency determination with respect to a qualified absentee owner of an underground storage tank.

Summary of Amendments

The amendments to this bill since the previous analysis limit the relief to deficiency determinations for a failure to file returns and allow the BOE to revise the period of liability to three years, if the owner meets the criteria for a qualified absentee owner.

ANALYSIS

CURRENT LAW

Under the Underground Storage Tank Maintenance Fee Law, Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code (RTC), the BOE is responsible for the collection and administration of the underground storage tank maintenance fee (UST fee), as specified in Article 5 of Chapter 6.75 of Division 20 of the Health and Safety Code. As specified and defined in the Health and Safety Code, the owner of an underground storage tank that contains petroleum products is required to pay a storage fee for each gallon of petroleum (including both gasoline and diesel) placed in an underground storage tank which he or she owns. "Owner" is defined as "the owner of an underground storage tank containing petroleum," which includes any agency or department of a city, county, or district but does not include any agency or department of the state or federal government. In general, and as described in the Health and Safety Code, no person may own or operate an underground storage tank unless a permit for its operation has been issued by a local agency to the owner or operator of the tank.

As specified in RTC Section 50108.1, every person who is an owner of an underground storage tank (UST) for which a permit is required under the Health and Safety Code must register with the BOE. The owner must file a return with the BOE and remit the UST fees timely, as established by law. If the owner fails to register with the BOE and fails to file returns, the BOE is authorized to issue a notice of determination to such owners for periods as far back as eight years.

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PROPOSED LAW

This bill would amend RTC Section 50117.5 to allow the BOE the flexibility to reduce the period for which a feepayer is liable for the fee from as many as eight years to three years for determinations, if the owner meets the criteria for a qualified absentee owner. In cases where a determination has been issued for failure to file a return for periods in excess of three years and the feepayer has petitioned the liability, the BOE may revise the period of liability to three years, rather than a period that exceeds three years, up to as many as eight years, if the BOE finds the owner is qualified absentee owner.

This bill defines “qualified absentee owner” to mean the owner of an underground storage tank at the time the report or return was due who meets all of the following criteria:

- The owner was not the operator, as defined in Section 25299.20 of the Health and Safety Code, of the underground storage tank system.
- The owner had no ownership interest in the person who was the operator of the underground storage tank system.
- The owner establishes that he or she did not know of, and had no reason to know of, the requirement that the owner register with the board as an owner of an underground storage tank.
- The board did not have contact with the owner of the underground storage tank regarding the requirement that the owner register with the board prior to the date of the contact that prompted the board to issue the notice of determination.

BACKGROUND

Underground storage tanks are located primarily at service stations and truck stops, and the owner of the underground storage tank(s) is often, but not always, the operator of the facility. Persons engaging in or conducting business as a seller at such locations are required to hold a Sales and Use Tax permit. Therefore, subsequent to the initial registration of underground storage tank owners in 1989, when the fee was first enacted, the BOE mailed notices that explained the UST fee and a UST owner’s obligations pertaining to the fee to Sales and Use Tax (seller’s) permit holders selling fuel products, in order to reach the largest number of potential tank owners. Notification was also mailed to Environmental Fee and Fuel Taxes registrants.

Since that time the Special Taxes Division has continued to conduct extensive outreach and investigation programs to locate and achieve compliance from previously unregistered underground storage tank owners. These efforts include the following:

- **BOE-5 Investigation Program** – Special Taxes (Compliance Branch) staff directly contact and investigate holders of seller’s permits with business and account characteristic codes indicating the possible presence of underground storage tanks, usually triggered by changes to registration records. Every new or updated sales and use tax registration of a gas station is investigated by staff for compliance with the UST fee program.
- **SCOP** – (Statewide Compliance and Outreach Program) – In conjunction with Sales and Use Tax Department staff, businesses in targeted areas are investigated for compliance with BOE programs by BOE field investigators. Businesses in the targeted areas with underground storage tanks are investigated for compliance with

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the provisions of the UST fee program. Non-compliant underground storage tank sites are referred to compliance staff for investigation and registration.

- **Field Audit Leads** – Each BOE audit completed at a location where underground storage tanks are present generates a report to staff. Each report is investigated to assure compliance with the UST fee program (AUD-506 Report).
- **CUPA Leads** – Compliance staff works cooperatively with local underground storage tank permitting agencies to assure uniform compliance, including attending CUPA events.
- **BOE Tax Evasion Hotline** – BOE has a process in place to accept and investigate tips regarding unregistered accounts, including underground storage tank accounts, from the general public.
- **State Water Resources Control Board Leads** – All accounts seeking underground storage tank fee program reimbursement from the SWRCB are investigated to assure compliance with the UST fee program.
- **Fuel Taxes Division Direct Mail Newsletter** – All accounts registered for Special Taxes programs receive annual informational newsletters. The UST fee program is featured periodically in this publication.
- **Small Business Fairs** – Special Taxes staff has participated in and provided informative material at small business fairs throughout California, presenting material for and explaining the requirements of our special taxes programs, including the UST fee program.
- **Tax Information Bulletins** – All accounts registered with the BOE's Sales and Use Tax program receive a quarterly Tax Information Bulletin. The UST fee program has been featured a number of times in this publication.

Despite the BOE's good faith efforts to provide information to persons required to report and pay the fee, there are still cases of *absentee* tank owners who claim they were never notified because they do not hold seller's permits or other licenses with the BOE. Absentee owners often lease their property and the underground storage tanks located on such property to another person who operates the service station or truck stop. In some instances, the operator subleases the property to another operator. Consequently, it was generally the operator of the service station or truck stop, i.e., the person who held the seller's permit, who received the BOE's notification, rather than the owner of the underground storage tank. This has resulted in a hardship for many absentee tank owners who, by the time the BOE determines who owns the underground storage tanks, suddenly owe several years of back fees, interest, and penalties. Many absentee owners have difficulty paying such a determination because they often have no means of obtaining reimbursement for the fee due for past periods.

If a previously unregistered entity is discovered, Special Taxes (Compliance Branch) is again primarily focused on working cooperatively with the underground storage tank owner to gain voluntary compliance. If the BOE is unable to obtain a registration application from the owner of a particular delinquent UST, an ownership investigation is completed in cooperation with local permitting agencies to accurately identify the underground storage tank owner. Once an ownership determination is made, an involuntary registration is processed and the account enters our delinquency payment cycle for the delinquent fee returns.

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COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the BOE and is intended to provide limited fee liability relief in those cases where the underground storage tank owner is found to be a qualified absentee owner.
2. **As proposed to be amended,** the bill will allow the BOE the ability to provide relief in those cases where a notice of determination for failure to file a return has been petitioned. **The March 22, 2011 amendments** are consistent with the BOE's intent to provide limited fee liability relief and clarify that both BOE Members and staff may limit the deficiency determination to a three-year period, or re-determine an appealed determination to a three year period.
3. **This provision would provide only limited relief for a qualified absentee owner.** In general, in those cases where a qualified absentee owner failed to file returns, the BOE would be able to issue a deficiency determination for up to a maximum of eight years. If the absentee owner petitions the determination, then the BOE would decide if the absentee owner meets the criteria for relief and if the deficiency determination should be re-determined to reduce the period of liability for the fee to three years. In short, the BOE would only be able to provide relief for a maximum of five years, thereby continuing to hold the feepayer liable for a three-year period.
4. **The owner may not be the operator of a gas station, yet the owner is liable for the payment of the underground storage tank fee.** As explained in the background, despite the BOE's best efforts in attempting to identify, locate, and communicate with the owners of underground storage tanks that are subject to the fee, there are still cases in which the owner fails to register with the BOE to report and pay the UST fee. These cases generally involve a person who is the owner of the property where the underground storage tanks are located but is not the operator of the gas station, or does not have any ownership ties to the operator, or does not have previous business experience or knowledge of the operating and licensing responsibilities associated with a gas station. In these cases, the owner is the lessor of the property, and the gas station operator is the lessee and responsible for the payment of the Sales and Use tax. When the BOE ultimately identifies the owner and has to issue determinations for failure to file returns, the owners are unable to pay because they did not include the cost of the UST fee in their lease charges and they have no means of obtaining reimbursement for the fee due for past periods.

COST ESTIMATE

The BOE would not incur additional costs to administer this bill.

REVENUE ESTIMATE

Based upon a review of determinations issued during the past fiscal year, the estimated revenue loss for this measure is approximately \$50,000 per year.

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